

**Balboa Baking Co. and Bakery & Confectionery  
Workers International Union, Local 315, AFL-  
CIO. Case 21-CA-29574**

February 28, 1994

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND TRUESDALE

Upon a charge filed by Bakery & Confectionery Workers International Union, Local 315, AFL-CIO, the Union, the General Counsel of the National Labor Relations Board issued a complaint on September 29, 1993, against Balboa Baking Co., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On January 10, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On January 12, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated December 1, 1993, notified the Respondent that unless an answer were received by December 10, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a corporation, has been engaged in the operation of a retail bakery located at 7004 Carroll Road, San Diego, California. The Respondent derives annual gross revenues in excess of \$500,000 and annually purchases and receives goods and products valued in excess of \$10,000 from suppliers located inside the State of California, which suppliers purchased the same goods and products directly from suppliers lo-

cated outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All bakery employees covered by the July 16, 1992 to July 16, 1995 collective-bargaining agreement between Respondent and the Union; excluding all other employees, professional employees, guards and supervisors as defined in the Act.

On May 28, 1991, the Union was certified as the exclusive collective-bargaining representative of the unit employees. At all times since May 28, 1991, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employees.

On or about July 16, 1992, the Respondent and the Union executed a collective-bargaining agreement effective from July 16, 1992, to July 16, 1995, covering the unit employees. Since February 17, 1993, the Respondent has failed and refused to make health and welfare and pension trust fund contributions required under the terms of the contract. These subjects relate to the wages, hours, and other terms and conditions of employment of unit employees and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without the Union's consent.

**CONCLUSION OF LAW**

By the acts and conduct described above, the Respondent has violated Section 8(a)(1) and (5) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

**REMEDY**

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to make contractually required contributions to the health and welfare and pension trust fund, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn.

7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

### ORDER

The National Labor Relations Board orders that the Respondent, Balboa Baking Co., San Diego, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with Bakery & Confectionery Workers International Union, Local 315, AFL-CIO, on behalf of employees in the following appropriate unit by failing and refusing to make health and welfare and pension trust fund contributions required under the terms of the July 16, 1992, to July 16, 1995, collective-bargaining agreement. The unit is:

All bakery employees covered by the July 16, 1992 to July 16, 1995 collective-bargaining agreement between Respondent and the Union; excluding all other employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Abide by and apply the terms of its collective-bargaining agreement with the Union.

(b) Make unit employees and the funds whole, with interest where applicable, as set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in San Diego, California, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional

Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 28, 1994

---

James M. Stephens, Chairman

---

Dennis M. Devaney, Member

---

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

### APPENDIX

#### NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with Bakery & Confectionery Workers International Union, Local 315, AFL-CIO, as the certified exclusive collective-bargaining representative of our employees in the following appropriate unit by failing to honor the terms of our collective-bargaining agreement with the Union regarding payment of health and welfare and pension trust fund contributions. The unit is as follows:

All bakery employees covered by our July 16, 1992 to July 16, 1995 collective-bargaining agreement with the Union; excluding all other employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL abide by and apply the terms of our collective-bargaining agreement with the Union.

WE WILL make our unit employees and the funds whole, with interest where applicable, for our failure to

make health and welfare and pension trust fund contributions.

BALBOA BAKING CO.